

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

10-cr-219-WMS-HKS

TONAWANDA COKE CORPORATION, et al.

Defendants.

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**DECLARATION OF RICK W. KENNEDY, ESQ.**

RICK W. KENNEDY, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declares the following to be true and correct:

1. I am an attorney licensed to practice in the State of New York, and a partner in the firm Hodgson Russ LLP (“Hodgson Russ”). I am admitted to practice before this Court.

2. Hodgson Russ represents defendant Tonawanda Coke Corporation (“Tonawanda Coke”) in connection with environmental enforcement and regulatory actions brought by federal and state agencies, including the United State Environmental Protection Agency (“USEPA”), the United States Department of Justice, Environmental Enforcement Section, Environment & Natural Resources Division (“USDOJ”), the New York State Department of Environmental Conservation (“NYSDEC,”) and the New York State Attorney General (“NYSAG,” and collectively with USEPA, USDOJ, and NYSDEC, the “Agencies”). *See infra* Sections A and B for a detailed description and discussion of those matters.

3. Hodgson Russ also represents Tonawanda Coke and defendant Mark Kamholz ("Kamholz") in pending civil tort litigation alleging personal injuries and property damage. *See infra* Section C for a detailed description and discussion of those cases.

4. I am aware of the facts and circumstances surrounding the criminal conviction and pre-sentencing submissions of Tonawanda Coke and Kamholz before this Court.

5. I make this declaration in support of Tonawanda Coke's pre-sentencing memorandum. Except as otherwise indicated, I have personal knowledge of the facts and circumstances set forth herein.

**A. Historic Site Investigations**

6. In 1917, the first coke battery began to operate at Tonawanda Coke's current plant site – 3875 River Road, Tonawanda, New York (the "Facility").

7. The owner of the Facility from 1917 through 1947 was Semet-Solvay Company, a subsidiary of Allied Chemical and Dye Corporation. In 1947, Semet-Solvay Company was merged into Allied Chemical Corporation, which owned and operated the Facility until January 27, 1978, when it was sold to Tonawanda Coke.

8. Semet-Solvay Company and Allied Chemical Corporation (the "Historic Owners") placed fill and disposed of waste in discrete areas of the facility. Materials used as fill or disposed of by the Historic Owners included fly-ash cinders, coal tar sludges, bricks, rubble, sand, demolition materials, and wood shavings impregnated with iron oxide and coal tar sludges.

9. In 1979, the New York State Legislature enacted Environmental Conservation Law, Article 27, Title 13, to address the threat of hazardous waste disposal sites in

the wake of Love Canal. That legislation established what is commonly known as New York's Inactive Hazardous Waste Disposal Site Program ("IHWDS Program"). The purpose of the IHWDS Program is to identify, investigate, and cleanup sites where consequential amounts of hazardous waste may be disposed or released. Facilities covered by the IHWDS Program are listed on the New York State Inactive Hazardous Waste Disposal Site Registry (the "Registry"). All inactive hazardous waste disposal sites go through a process of investigation, evaluation, cleanup, and monitoring that have several distinct stages.

10. Article 27, Title 13 of the Environmental Conservation Law also imposes primary liability for addressing contamination at a listed site on the current owner of the property.

11. In 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). That statute imposes liability on various classes of persons, including current property owners, for responding to hazardous substance contamination. The statute also directs USEPA to investigate facilities thought to be contaminated using a Hazard Ranking System ("HRS") to identify the most significant problems for listing on the National Priorities List ("NPL").

12. In 1981, NYSDEC collected sediment and surface water samples from the Tonawanda Coke drainage basin in furtherance of its investigation of potential inactive hazardous waste disposal sites on the Niagara River.

13. Based on NYSDEC's 1981 sampling event, the United States Geological Survey ("USGS") collected soil, groundwater, and surface water samples from the Facility in 1982 and 1983 to determine a HRS ranking for the Facility.

14. After the USGS sampling events, Tonawanda Coke voluntarily engaged qualified third-party environmental professionals to undertake a comprehensive investigation of the Facility that encompassed areas beyond the suspected fill and disposal areas. This series of Facility investigations included three (3) major studies; all of which were submitted to NYSDEC. The reports documenting the three (3) studies are:

- Tonawanda Coke Corporation, New York State Superfund Phase I Summary Report, dated November 1983, prepared by Recra Research Inc.<sup>1</sup>
- Phase II Site Investigation, Tonawanda Coke Site, dated December 1986, prepared by Malcolm Pirnie Inc.<sup>2</sup>
- Supplemental Site Investigation, Tonawanda Coke Corporation, dated July 1990, prepared by Conestoga-Rovers and Associates (“CRA”).<sup>3</sup>

15. In 1990, NYSDEC listed the Facility on the Registry as a Class 2 site. The Facility’s Registry listing identified three (3) distinct areas where the Historic Owners had previously placed fill or disposed of materials, with each being its own operable unit. These

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<sup>1</sup> The purpose of this study and report was to calculate a HRS for the Facility based upon the previously obtained USGS sample results. The HRS was not high enough to place the facility on the NPL.

<sup>2</sup> The Phase II Site Investigation consisted of the following activities: installation of seven (7) overburden groundwater monitoring wells; collection of thirteen (13) groundwater samples; installation of twelve (12) test pits; collection of one (1) composite soil sample from four (4) of the twelve (12) test pits; and, collection of eight (8) surface water samples.

<sup>3</sup> The Supplemental Site Investigation consisted of the following activities: installation of ten (10) overburden groundwater monitoring wells; collection of 32 groundwater samples; installation of eight (8) test pits; collection of four (4) composite soil samples from the test pits; advancement of four (4) boreholes; collection of two (2) composite samples from the boreholes; collection of 21 surface water samples; and, collection of ten (10) sediment samples.

operable units (known as Site 108, Site 109, and Site 110) were located across from the production facility that was used to transfer coal from the banks of the Niagara River, an area adjacent to and on the east side of River Road, and the northeast corner of the area east of River Road, respectively.

16. Between 1990 and 1997, Tonawanda Coke continued to work cooperatively with NYSDEC conducting additional investigations of potential Facility-wide contamination. These follow up investigations were documented in the following reports:

- Additional Site Investigation, Tonawanda Coke Corporation, dated November 1992, prepared by CRA.<sup>4</sup>
- Remedial Investigation, Summary Report, Tonawanda Coke Corporation, dated May 1997, prepared by CRA.<sup>5</sup>.

17. Based on the results of the five (5) prior submissions to NYSDEC, a Consent Order was entered into between Tonawanda Coke and NYSDEC on September 5, 1997 (the "Order"). The Order obligated Tonawanda Coke to select and execute a proposed remedy for each operable unit.

18. Remedies were completed for Sites 109 and 110 and approved by NYSDEC in a Record of Decision issued in March 2008, acknowledging that no further action is warranted. In conjunction with that determination, NYSDEC relied upon a report from CRA

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<sup>4</sup> The Additional Site Investigation consisted of the following activities: installation of three (3) overburden groundwater monitoring wells; collection of ten (10) groundwater samples; installation of nine (9) test pits; collection of two (2) samples from the test pits; advancement of one (1) borehole; collection of five (5) surface water samples; and, collection of two (2) sediment samples.

titled “Remedial Investigation Summary Report,” dated January 2008, which summarized in detail all sampling and investigatory actions and results dating back to 1981 (the “Summary Report”). The New York State Department of Health concurred with the assessment by NYSDEC that the information provided to date demonstrated that the remedial work at Sites 109 and 110 had been sufficient.

19. Tonawanda Coke and NYSDEC have agreed in principle to a remedial plan to address the residual materials present at Site 108 and are discussing final details and an implementation schedule which takes into account other ongoing projects at the Facility.

20. The Summary Report documents essential facts concerning the Facility-wide condition of soil, groundwater, and surface water. The salient conclusions of that report include:

- Clay Aquitard Beneath the Facility: A native glaciolacustrine clay deposit is present below general fill soil across the entire Facility, which acts as an aquitard due to its impervious nature. The exact thickness of the clay varies across the Facility. In some areas, it has been estimated to be present at a thickness of more than fifty (50) feet in depth. It is highly unlikely any on-site activities would have affected the quality of any permanent groundwater beneath the Facility.
- Soil: Low level Volatile Organic Compounds (“VOCs”), poly-aromatic hydrocarbons (“PAHs”), and metals were detected in the fill material

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<sup>5</sup> The Summary Report assembled all of the available information from the previous investigations performed at the Site pertaining to groundwater, surface water, soils, and sediment and discussed their

across the Facility. The presence of PAHs across the Facility would be expected at a coke/coal production facility. In fact, coal is comprised of PAHs. PAH compounds in the soil would be anticipated, as these compounds readily adsorb to the soil particles. However, this adsorption also virtually eliminates the possibility of migration of the PAH compounds into groundwater. Based on the foregoing, the presence of these materials in the soils at the Facility do not pose a significant threat to the environment.

- Groundwater: Shallow groundwater at the Facility (where present) is perched, resting atop the clay aquitard which essentially eliminates vertical migration of groundwater at the Facility, and greatly restricts/dictates lateral groundwater migration. Due to the limited thickness of the overburden groundwater regime, and its intermittent nature in some areas, groundwater movement throughout the Facility is negligible. Thus, any contaminants present in the groundwater are localized, and do not migrate off-site.

Two distinct areas were identified where chemical substances were present in the groundwater. Based on sampling surrounding, and downgradient of these locations, the substances detected were found to be limited to a very small area (*i.e.* had not migrated) and otherwise insignificant, because there is no aquifer present. Furthermore, the

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significance in regard to potential impact to human health and the environment both on-site and off-site.

chemicals identified in the two locations have not been identified in any location exiting the Facility.

- Surface Water: No chemical substances were found to be leaving the Facility via the surface water pathways, either to the Niagara River or to adjacent properties. Chemical substances present in Facility surface waters to the west of River Road appear to be due to off-Site surface water drainage from the southern defunct oil-field properties, which represents the only sampling results of note.
- Potential Migration Pathways for Contaminants at the Facility: The Summary Report analyzed the potential for constituents to migrate from the Facility. The potential migration pathways were determined to be: atmospheric dispersion, surface water runoff, and groundwater migration. None of these pathways are viable transfer mechanisms.

21. With regard to the historic investigation of the coal storage area specifically, the Summary Report noted the following:

- Soil: Analytical results for soil in the coal storage area identified no VOCs, including benzene, above recommended soil cleanup objectives ("RSCOs"). Five (5) PAHs were found to be above the RSCOs for individual readings, but in total concentration, were below the maximum value applicable to them. Additionally, all five (5) of the identified PAHs were expected to be present in any sampling regime, as they are natural

ingredients in coal. Minor concentrations were noted with regard to four (4) metals, all of which were deemed insignificant.

Composite samples in the area did not identify the presence of any constituents above regulatory standards.

- Groundwater: Three downgradient monitoring wells at the Facility were used to evaluate the potential impacts on the groundwater resulting from the coal storage area. With regard to benzene, only one sample in December 1989 was identified above NYSDEC's maximum contaminant level ("MCL") at the time, and that hit was below Sanitary Code Part 5 drinking water standards. Cyanide was the only other constituent identified in excess of its MCL in October 1989 and December 1989, but was deemed to be from an adjacent off-site source, and therefore, required no further action.

22. The historic investigations of the Facility, as documented in the Summary Report, demonstrate that Tonawanda Coke has worked closely with NYSDEC to comprehensively investigate and address Facility-wide contamination concerns and that, other than the remedial work planned for Site 108, no further action is necessary.

**B. Administrative Enforcement Actions, Proceedings, and Ongoing Settlement Discussions**

**(i) USEPA/NYSDEC Requests for Information, Notice of Violation, and Compliance Orders**

23. USEPA issued Tonawanda Coke a series of Requests for Information ("RFIs") pursuant to various federal environmental statutes, including the Resource

Conservation and Recovery Act (“RCRA”), the Clean Water Act (“CWA”), CERCLA, the Emergency Planning and Community Right-to-Know Act (“EPCRA”), and the Clean Air Act (“CAA”). See **Exhibit A** to this declaration for a list of the RFIs and summary of Tonawanda Coke’s responses. The RFIs sought a wide-range of information, and included numerous substantive requests with multiple sub-parts. Tonawanda Coke timely responded to all of the RFIs, and maintained a good cooperative working relationship with USEPA throughout the process.

24. USEPA, NYSDEC, and the Town of Tonawanda issued a series of Notices of Violation (“NOVs”) regarding the Facility’s operations. See **Exhibit A** to this declaration for a list of the NOVs and summary of Tonawanda Coke’s responses. Tonawanda Coke timely responded to all of the NOVs, and has either completely addressed, or is in the process of addressing, the issues raised in each one. In every instance, Tonawanda Coke maintains a good cooperative working relationship with the issuing agency.

25. USEPA and NYSDEC issued a series of Administrative Compliance Orders (“ACOs”) and entered into a Consent Agreement and Final Order (“CAFO”) regarding various aspects of the facility’s operations. See **Exhibit A** to this declaration for a complete list of the administrative actions brought against Tonawanda Coke since 2009, and a summary of Tonawanda Coke’s responses to each.

26. One (1) of the ACOs and the RCRA complaint and CAFO involve circumstances directly involved in the criminal case.

27. Specifically, the December 19, 2009 CWA ACO required Tonawanda Coke to perform certain tasks to address discharges from the coal pile runoff in the coal field

storage area ("Outfall 002"). Outfall 002 is a source which is regulated under the Facility's existing State Pollutant Discharge Elimination System ("SPDES") permit through the CWA. In order to address the Outfall 002 issues, Tonawanda Coke engaged CRA to undertake a critical evaluation of conditions in the coal pile area, and to design treatment upgrades and stormwater management improvements. CRA provided Tonawanda Coke with an Engineering Design Report, dated October 2010, which outlined significant design treatment upgrades and stormwater management improvements, which was subsequently submitted to, and approved by, USEPA. With the assistance of CRA, Tonawanda Coke has implemented the series of stormwater upgrades and improvements at the Facility, all of which has been reviewed, and approved by, USEPA and/or NYSDEC.

28. In addition, Tonawanda Coke settled the RCRA Complaint issued by USEPA; the settlement is embodied in a Consent Agreement and Final Order, dated August 3, 2010 ("CAFO"). As part of the CAFO, Tonawanda Coke agreed to remediate tar-like material in the vicinity of the former Barrett tank area at the Facility. Tonawanda Coke used highly qualified third-party environmental professionals to oversee the entire project, and NYSDEC had a daily presence on-site to review ongoing operations, including the excavation and recycling of the harvested tar-like material.

29. A significant amount of tar-like material was identified at the Facility during the excavation project that was associated with the operation of the Facility prior to Tonawanda Coke's ownership. Even though Tonawanda Coke did not produce, manage or release the additional tar-like material identified during the excavation, Tonawanda Coke agreed to extend the scope of the remediation project to encompass the purely historic materials.

30. On June 15, 2012, TCC filed a final report with USEPA documenting compliance with the CAFO, including the fact that it had remediated an area eighteen (18) times larger than originally anticipated, and identified by USEPA based on pre-project modeling estimates.

31. With regard to each and every RFI, NOV, ACO and CAFO (the "Administrative Actions"), Tonawanda Coke did not admit or accept any of the factual allegations, findings, legal conclusions or other assertions made by the applicable overseeing agency; it reserved its rights to contest all such matters. Notwithstanding this fact, Tonawanda Coke never attempted to undertake any administrative or legal challenges to challenge any issue raised by the Agencies. Instead, Tonawanda Coke agreed to undertake the work necessary to address the issues raised by the Agencies, and has maintained an excellent, cooperative working relationship with them. Furthermore, Tonawanda Coke has worked with highly qualified third-party environmental professionals to ensure the tasks required by the Administrative Actions were properly addressed, the fees for which have all been paid directly by the company.

32. As of April 2013, Tonawanda Coke has spent in excess of approximately \$11.2 million dollars to address the Administrative Actions. This does not include additional ongoing Facility upgrades that were voluntarily undertaken by Tonawanda Coke, or the use of Facility-wide resources and man-hours. In addition, Tonawanda Coke has obligated itself to a number of significant Facility upgrades and rehabilitation actions in the future that will cause it to incur substantial costs and the intense use of Facility resources through 2015.

**(ii) Ongoing Settlement Discussions with the Civil Environmental Enforcement Division of the U.S. Department of Justice**

33. The Agencies have identified a series of additional projects intended to minimize Tonawanda Coke's impact on the environment and to ensure rigorous compliance with applicable environmental laws. The Agencies assert that they are entitled to administrative and/or judicial injunctive relief compelling Tonawanda Coke to undertake those projects. The Agencies and Tonawanda Coke have been engaged in global settlement discussions to resolve these pending matters. The terms of any such settlement necessarily include a significant civil penalty, voluntary agreement to certain heightened regulatory standards, substantial operational and Facility upgrades, and other potential supplemental environmental projects designed to benefit the community.

**C. Civil Tort Actions**

34. There are currently twenty (20) civil lawsuits pending against Tonawanda Coke, Mr. Crane, and/or Mr. Kamholz. In total, 307 individuals have initiated tort actions. There is also a class action sounding in tort that covers all of the remaining potential plaintiffs in the communities surrounding Tonawanda Coke.

35. To be more specific, a class action, a mass tort action, and an additional eighteen (18) lawsuits were commenced against Tonawanda Coke in 2010 and 2011. Of those lawsuits, some name the former President of Tonawanda Coke (Mr. J.D. Crane) as an individual defendant, and others name both Mr. Crane and Mr. Kamholz as individual defendants.

36. All of the lawsuits are venued in Erie County Supreme Court, and are being heard by the Honorable Paula L. Feroletto, J.S.C.

37. The lawsuits pending against Tonawanda Coke, Mr. Crane, and/or Mr.

Kamholz are:

*DeLuca*, Index No. 2010-10280  
*Guggemos*, Index No. 2010-10578  
*Brigante*, Index No. 2010-10579  
*Nuchereno*, Index No. 2010-10580  
*Vanlear*, Index No. 2010-10694  
*Barr*, Index No. 2010-10695  
*Walsh*, Index No. 2010-11101  
*Axelson*, Index No. 2010-11102  
*Darin*, Index No. 2010-11319  
*Westphal*, Index No. 2010-11360  
*Cameron*, Index No. 2010-11746  
*Coffey*, Index No. 2011-718  
*Palistrant*, Index No. 2011-1418  
*Ratajczak*, Index No. 2011-1806  
*Drapo*, Index No. 2011-1849  
*Snyder*, Index No. 2011-4575  
*Brown*, Index No. 2011-4576  
*Carbone*, Index No. 2011-4708

Of those, the *DeLuca* case is the class action matter encompassing all potential plaintiffs in the communities surrounding Tonawanda Coke.

38. Two (2) other lawsuits are pending against only Tonawanda Coke and Mr. Crane: *Robins v. Tonawanda Coke, et al.* (Index No. 2011-606025); and *Abbott v. Tonawanda Coke, et al.* (Index No. 2011-2327), a mass tort action with 268 named plaintiffs.

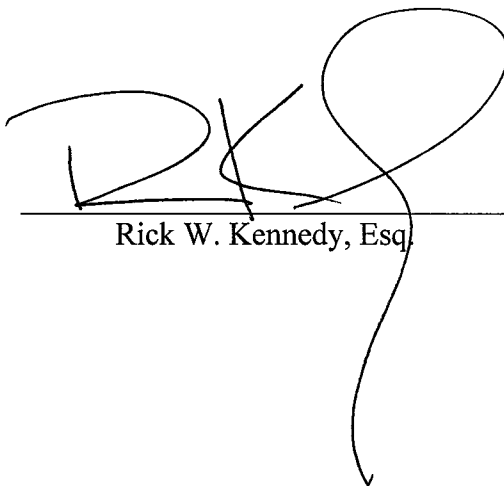
39. All of the foregoing tort actions arise out of the alleged activities of Tonawanda Coke, Mr. Crane, and/or Mr. Kamholz in the operation of an industrial coke production facility.

40. After motions to dismiss were resolved, the following claims remain: negligence, gross negligence, strict liability, battery, trespass, and nuisance. Plaintiffs allege that

as a result of the defendants' actions, they are suffering from property damage, personal injury, fear of developing cancer, a need for medical monitoring, and/or a general loss of quality of life.

41. These actions are in the middle of the discovery process. All parties have provided initial document disclosures. Defendants produced over 74,000 documents in their initial production. Plaintiffs have provided authorizations and defendants are in the process of gathering plaintiffs' employment, education, and medical records. The parties anticipate beginning depositions in the Winter 2013.

Dated: September 13, 2013



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Rick W. Kennedy, Esq.

## **EXHIBIT A**

## TONAWANDA COKE CORPORATION ("TCC") - ADMINISTRATIVE ACTIONS OR PROCEEDINGS FROM 2009 TO PRESENT

CLEAN AIR ACT ORDERS	DATE	STATUS	NOTES
EPA Administrative Order, Index No. CAA-02-2010-1005	April 28, 2010	SUBSTANTIALLY COMPLETE; REMAINING TASKS ON SCHEDULE	<p>The Administrative Compliance Order ("ACO") included 7 substantive projects requiring a number of actions, including the development and implementation of a schedule for repair and maintenance of exhausters and back-up generators at the facility, an assessment of the root causes of two failures at the plant in March 17, 2009 and March 31, 2010, and implementation of any recommended actions identified from said assessment.</p> <p>In response to the ACO, Conestoga-Rovers &amp; Associates ("CRA") drafted a September 2010 "Incident Investigation and Engineering Assessment" for TCC outlining 18 activities that should be undertaken at the facility. All but 4 of the substantive facility-wide recommendations have been completed as of the date of this chart, including the replacement and installation of new components/equipment, revisions to certain on-site programs and schematics, and further investigation into certain operational programs. The 4 open recommendations involve certain on-site training and operational programs, as well as updating certain drawings and schematics of by-product area components, which are ongoing because of additional changes to the by-product area being required by the agencies. A October 27, 2010 letter from the United States Environmental Protection Agency ("USEPA") requested monthly status reports of all on-going site actions. Status reports began in November 2010, and are still being submitted to USEPA to explain the ongoing progress on all recommendations.</p>
EPA Compliance Order, CAA-02-2010-1001	January 7, 2010	COMPLETE	<p>The ACO was received on January 11, 2010, and a formal meeting was held with USEPA on February 8, 2010. The ACO included 21 substantive projects, including the sealing and ducting of openings on tar-intercepting sumps and ammonia still liquor tanks, submission of certain documentation, development of certain calibration and operation procedures, implementation of certain training procedures, and compliance with regulatory required monitoring programs.</p> <p>Additional time was requested to address a number of the ordered tasks by letter, dated February 18, 2010. Permission for an extension of time was subsequently granted by USEPA to address complex issues. Final approval of the last remaining item - the test protocols required by ordered provision XX [Emission test protocols for boiler #7 and battery underfire/waste heat stacks, and the ammonia still water sampling test protocol] - was granted by letter, dated July 15, 2010.</p>
EPA Compliance Order, CAA-02-2010-1002	February 4, 2010	COMPLETE	<p>The ACO was received on February 5, 2010, and a teleconference was held with USEPA and the New York State Department of Environmental Conservation ("NYSDEC") on March 12, 2010 to discuss the ordered provisions included in the ACO.</p> <p>TCC provided a substantive response to all ordered provisions on April 12, 2010, including an engineering analysis of the baffle system, analytical results from sampling of the quench tower make-up water, and a commitment to undertake quarterly make-up water sampling.</p>
NYSDEC Order On Consent, R9-20110315-7	July 19, 2011	SUBSTANTIALLY COMPLETE; REMAINING TASKS ON SCHEDULE	<p>The Order on Consent is the product of cooperative discussions among TCC, NYSDEC and USEPA that culminated in the issuance of dual orders from both agencies. The orders required 11 major projects, including the finalization and use of a coke oven gas leak survey program (voluntary program not regulatory required), installation of certain equipment on the west flare stack, development and implementation of recommendations from an engineering analysis of the impacts of ammonia emissions from the ammonia still, development and implementation of a condensate program (including addressing existing on-site equipment, and fabrication of new components), development and implementation of a vessel venting program (including addressing existing on-site equipment, and fabrication of new components), completion of repairs to the top of the tar decanter unit, installation of a facility-wide Programmable Logic Controller ("PLC") hub system, rehabilitation of the ammonia scrubber system and tar precipitator, disconnecting and purging of the light oil scrubber from the coke oven gas system, development and implementation of an engineering assessment of by-passes in the coke oven gas system, installation of a new LGA unit, and modification of the primary cooler system.</p> <p>The vast majority of these required tasks involved significant alteration to the facility's by-product area, as well as voluntary changes to the facility's operations and monitoring regime. All but 3 items have been completed as of the date of this chart, with only the installation of the new LGA unit (planned for this fall), installation of a new 24" by-pass (scheduled for November 30, 2013), and the conversion of the primary cooler system (scheduled for December 2014) remaining. Development and implementation of all required tasks included a significant allocation of facility resources - both at the time each issue was addressed, and going forward - in order to meet the agencies' requirements.</p>

EPA Compliance Order On Consent, CAA-02-2011-1013	July 19, 2011	<b>SUBSTANTIALLY COMPLETE; REMAINING TASKS ON SCHEDULE</b>	<p>The Order on Consent is the product of cooperative discussions among TCC, NYSDEC and USEPA that culminated in the issuance of dual orders from both agencies. The orders required 11 major projects, including the finalization and use of a coke oven gas leak survey program (voluntary program not regulatory required), installation of certain equipment on the west flare stack, development and implementation of recommendations from an engineering analysis of the impacts of ammonia emissions from the ammonia still, development and implementation of a condensate program (including addressing existing on-site equipment, and fabrication of new components), development and implementation of a vessel venting program (including addressing existing on-site equipment, and fabrication of new components), completion of repairs to the top of the tar decanter unit, installation of a facility-wide Programmable Logic Controller ("PLC") hub system, rehabilitation of the ammonia scrubber system and tar precipitator, disconnecting and purging of the light oil scrubber from the coke oven gas system, development and implementation of an engineering assessment of by-passes in the coke oven gas system, installation of a new LGA unit, and modification of the primary cooler system.</p> <p>The vast majority of these required tasks involved significant alteration to the facility's by-product area, as well as voluntary changes to the facility's operations and monitoring regime. All but 3 items have been completed as of the date of this chart, with only the installation of the new LGA unit (planned for this fall), installation of a new 24" by-pass (scheduled for November 30, 2013), and the conversion of the primary cooler system (scheduled for December 2014) remaining. Development and implementation of all required tasks included a significant allocation of facility resources - both at the time each issue was addressed, and going forward - in order to meet the agencies' requirements.</p>
<b>CLEAN WATER ACT ORDERS</b>			
EPA Administrative Compliance Order, CWA-02-2010-3012	December 19, 2009	<b>COMPLETE</b>	<p>The ACO was received on December 24, 2009. The ACO included 7 substantive projects, including elements derived from USEPA's and NYSDEC's comprehensive Clean Water Act inspection of mid-2009. TCC completed 4 of the 7 substantive projects within the approved timeframes. Of the remaining 3 requirements, each involved follow up work that necessitated completion beyond the originally required timeframes, which included the Outfall 002 Plan of Action, a number of physical investigations of TCC sewers, and the replacement of wastewater treatment tanks. Work related to these 3 items were underway when ACO CWA-02-2010-3040 was issued, which included a subsequent schedule for their completion. Therefore, the issuance of ACO CWA-02-2010-3040 effectively superseded the remaining requirements of this ACO.</p>
EPA Administrative Compliance Order, CWA-02-2010-3040	August 6, 2010	<b>COMPLETE</b>	<p>The ACO was received on August 12, 2010. The ACO contained 12 substantive projects including certain follow up items to those required by ACO CWA-02-1020-3012, and the requirement that TCC prepare and implement a plan to achieve compliance with TCC's Town of Tonawanda discharge permit. 7 of the 12 substantive projects were met prior to the issuance of ACO CWA-02-2100-3013. Work related to the 5 open projects were underway when ACO CWA-02-2011-3013 was issued, which included a subsequent schedule for their completion. Therefore, the issuance of the ACO CWA-02-2011-3013 effectively superseded the remaining requirements of this ACO.</p>
EPA Administrative Compliance Order, CWA-02-2011-3013	January 20, 2011	<b>COMPLETE</b>	<p>The ACO was received on January 27, 2011. The ACO contained 11 substantive projects including the implementation of revised schedules from ACO CWA-02-2010-3040. 10 of the 11 substantive projects were completed by November 27, 2011, with the remaining substantive project included in ACO CWA-02-2012-3014 upon its issuance. Therefore, the issuance of ACO CWA-02-2012-3014 effectively superseded the remaining requirement of this ACO.</p>
EPA Administrative Compliance Order and Request for Information, CWA-02-2012-3014	December 27, 2011	<b>SUBSTANTIALLY COMPLETE; REMAINING TASKS ON SCHEDULE</b>	<p>The ACO was received on December 29, 2011, and included 5 substantive projects, including that TCC complete relocation and installation of the new ammonia still unit, finalize the routing of the ammonia still effluent to boiler #7, certify the facility's compliance with the terms of its Town of Tonawanda discharge permit, submit certain reports regarding all actions taken to reach compliance with the terms of its Town of Tonawanda discharge permit, and conduct post-certification monitoring of certain levels associated with the term of the Town of Tonawanda discharge permit by monthly composite sampling.</p> <p>Relocation of the ammonia still was completed by May 31, 2012, with use of the unit beginning June 5, 2012 after addressing certain start-up conditions. TCC was granted an extension of time to certify compliance with the terms of its Town of Tonawanda discharge permit until September 30, 2012, which it did on September 28, 2012. However, on November 27, 2012, USEPA requested additional sampling and monitoring requirements before it would certify all aspects of the ACO had been addressed. One such requirement required weekly monitoring of cyanide concentrations until twelve (12) consecutive weeks without a cyanide exceedance. Due to recent upset conditions at the facility, this milestone has not yet been reached.</p>
<b>RCRA ORDERS</b>			

EPA Complaint, Compliance Order and Notice of Opportunity for Hearing, RCRA-02-2010-7104; EPA Consent Agreement and Final Order, RCRA-02-2010-7104; EPA Consent Agreement and Final Order, RCRA-02-2012-7102; EPA Consent Agreement and Final Order, RCRA-02-2012-7104;	December 27, 2009; August 3, 2010; March 10, 2011; March 26, 2012	COMPLETE	<p>The USEPA filed the original complaint on December 27, 2009 alleging certain violations of New York State and Federal hazardous waste programs. On August 3, 2010, USEPA and TCC entered into a Consent Agreement and Final Order ("CAFO") in order to resolve the USEPA complaint without the need for litigation. As part of the CAFO, TCC did not admit to any of the allegations by USEPA, and TCC agreed to undertake a remediation project in the vicinity of the former Barrett tank area. During the project, NYSDEC oversaw daily on-site operations, including the excavation and recycling of the harvested tar-like material.</p> <p>During the course of the project, a significant amount of historic tar-like material was identified on-site. This material was associated with the operation of the facility prior to TCC's ownership. TCC agreed to extend the scope of the remediation project, which necessitated revisions to the original CAFO. On June 15, 2012, TCC filed a final report with USEPA documenting compliance with CAFO, including the remediation of an area 18 times larger than originally agreed.</p>
<b>REQUESTS FOR INFORMATION</b>			
RCRA Section 3007 Information Request	October 30, 2009	COMPLETE	<p>The Request for Information ("RFI") was received on November 2, 2009, and included 4 paragraphs of substantive requests, all of which included multiple sub-parts.</p> <p>A formal response was provided to USEPA on December 1, 2009.</p>
CWA Section 308 Request for Information	December 3, 2009	COMPLETE	<p>The RFI was received on December 8, 2009, and included 14 substantive requests, two of which included multiple sub-parts.</p> <p>A formal response was provided to USEPA on January 21, 2010.</p>
CWA (CWA-02-2010-3012 and CWA-IR-10-002) Request for Information	March 16, 2010	COMPLETE	<p>The RFI included 17 substantive requests, two of which included multiple sub-parts.</p> <p>A formal response was provided to USEPA on April 19, 2010.</p>
CWA Section 308 Request for Information	October 4, 2010	COMPLETE	<p>The RFI included 3 substantive requests, two of which included multiple sub-parts.</p> <p>A formal response was provided to USEPA on October 18, 2010.</p>
CWA Section 308 Request for Information	November 4, 2010	COMPLETE	<p>The RFI was received on November 8, 2010, and included 2 substantive requests, both of which included multiple sub-parts.</p> <p>A formal response was provided to USEPA on December 8, 2010.</p>
CERCLA Section 104(e) Request for Information	December 18, 2009	COMPLETE	<p>The RFI was received on December 24, 2009, and included 24 paragraphs of substantive requests, many of which included multiple sub-parts.</p> <p>A formal response to the RFI was provided to USEPA on January 15, 2010.</p>
EPCRA Section 313 Post-Inspection Request for Information	February 18, 2010	COMPLETE	<p>The RFI received on February 22, 2010, and included a request for measurements of various materials generated in coke over gas from production activities between the years 2005 and 2008.</p> <p>A formal response to the RFI was provided to USEPA on April 19, 2010.</p>
CAA Section 114 Request for Information	July 6, 2009	COMPLETE	<p>The RFI was received on July 14, 2009, and a formal meeting was held on July 23, 2009, with representative of USEPA in the Region 2 offices. The RFI included 25 paragraphs of substantive requests, many of which included multiple sub-parts.</p> <p>A formal response to the RFI was provided to USEPA on August 28, 2009.</p>
CAA Section 114 Request for Information	September 1, 2009	COMPLETE	<p>The RFI was received on September 8, 2009, and included 38 paragraphs of substantive requests, many of which included multiple sub-parts.</p> <p>A formal response to the RFI was provided to USEPA on October 7, 2009.</p>
CAA Section 114 Request for Information	October 30, 2009	COMPLETE	<p>The RFI required TCC to undertake a facility-wide mass emission rate of benzene utilizing a differential absorption light detection and ranging technology ("DIAL"), and to that extent, develop a testing protocol to dictate the scope of such analysis. Note that National Physical Laboratory of Middlesex, U.K. is the only current vendor for DIAL testing technology.</p> <p>TCC responded on December 2, 2009.</p>
CAA Section 114 Request for Information	January 25, 2010	COMPLETE	<p>The RFI required TCC to submit revised test protocols for the facility's ammonia still, boiler #7 stack, and the main battery underfire/waste heat stack within 20 business days of receipt. On February 8, 2010, a meeting was held with USEPA and TCC to discuss this requirement, as well as the other requirements included in the January 7, 2010 Clean Air Act ACO. By letter, dated February 11, 2010, USEPA acknowledged that the date from the January 25, 2010 RFI required submission of the required information prior to the date in the January 7, 2010 ACO, and agreed to re-establish a new schedule for submitting the required information. Therefore, this RFI was effectively superseded by the February 11, 2010 letter from USEPA.</p>
CAA Section 114 Request for Information	April 19, 2010	COMPLETE	<p>The RFI was received on April 23, 2010, and included 3 paragraphs of substantive requests, one of which was broken down into sub-parts.</p> <p>A formal response to the RFI was provided to USEPA on April 30, 2010.</p>
CAA Section 114 Request for Information	August 27, 2010	COMPLETE	<p>The RFI was received on September 1, 2010, and included 6 paragraphs of substantive requests, one of which was broken down into sub-parts.</p> <p>A formal response to the RFI was provided to USEPA on September 14, 2010.</p>
<b>NOTICES OF VIOLATION</b>			

NYSDEC, Article 19 of ECL	October 19, 2009	COMPLETE	The Notice of Violation ("NOV") identified that the facility did not have the proper baffle system installed on its quench tower operations. This NOV was addressed when baffles were installed in the Winter 2009.
NYSDEC, Three (3) NOV's, Article 19 of ECL	June 16, 2010	SETTLEMENT NEGOTIATIONS CONTINUING	The basis of the three (3) NOV's were alleged violations associated with the facility's limit on percentages of leaking doors, leaking off-takes, and excessive coal charging emissions. TCC responded on July 1, 2010 requesting a conference call with NYSDEC and USEPA, and requested all materials supporting such allegation. NYSDEC responded on July 13, 2010 supplying the underlying materials. After further discussions with NYSDEC, it was determined that any actions required to address all stated violations would be handled in conjunction with a comprehensive settlement agreement. Settlement discussions are ongoing.
NYSDEC, Failure to Submit Complete SPDES DMR	January 18, 2011	COMPLETE	Original Discharge Monitoring Report ("DMR") timely submitted, but lacked original signature. All parties governed by SPDES regulations are allowed to resubmit copies of DMR reports with original signature within 30 days of receipt of any NOV without penalty.  Original executed copy of the DMR was submitted on January 24, 2011.
NYSDEC, Failure to Submit Complete SPDES DMR	June 16, 2011	COMPLETE	Original Discharge Monitoring Report ("DMR") timely submitted, but lacked original signature. All parties governed by SPDES regulations are allowed to resubmit copies of DMR reports with original signature within 30 days of receipt of any NOV without penalty.  Original executed copy of the DMR was submitted on June 20, 2011.
NYSDEC, Article 19 of ECL	September 21, 2011	COMPLETE	Responded on January 30, 2012 to the NOV noting that the alleged violations were not valid, as NYSDEC was improperly calculating emissions from leaking doors and off-takes because of the use of federal methods and not those dictated by the state. Confirmation provided by NYSDEC on May 29, 2012 acknowledging miscalculation.
EPA, CAA-02-2010-1301, Section 113(a)1	December 7, 2009	COMPLETE	Responded on December 18, 2009. Completed reinstallation of the baffle system, and agreed to comply with all regulations related to the sampling and analysis of all quench tower make-up water.
EPA, CAA-02-2010-1303, Section 113(a)1	April 12, 2010	SETTLEMENT NEGOTIATIONS CONTINUING	Formal conference with USEPA requested on April 20, 2010. After further discussions with NYSDEC, it was determined that any actions required to address all stated violations would be handled in conjunction with a comprehensive settlement agreement. Settlement discussions are ongoing.
TOWN OF TONAWANDA, NOV No. 331-4, Sewer Use Ordinance, Section 165-20 B, 165-20 F	March 22, 2010	COMPLETE	The basis of the NOV was a cyanide exceedance above the facility's permit limitation. TCC responded on April 23, 2010 to the March 22, 2010 NOV, as well as the April 1, 2010 NOV, stating that the cause of the violation was the dephlegmator unit used in conjunction with the ammonia still, which was required to be maintained on the unit by NYSDEC and USEPA even though TCC had made multiple requests to remove it. The response also noted that TCC had engaged a consultant to undertake an engineering evaluation, and to recommend a long-term engineering and operational solution to the cyanide exceedance issue. The results of the evaluation determined that the likely cause of the exceedances was the use of the dephlegmator, and recommended that the ammonia still unit be replaced. This information was conveyed to the agencies, and acted as a basis for discussions that led to the replacement of the ammonia still unit at the facility.
TOWN OF TONAWANDA, NOV No. 331-5, Sewer Use Ordinance, Section 165-20 B, 165-20 F	April 1, 2010	COMPLETE	The basis of the NOV was a cyanide exceedance above the facility's permit limitation. TCC responded on April 23, 2010 to the March 22, 2010 NOV, as well as the April 1, 2010 NOV, stating that the cause of the violation was the dephlegmator unit used in conjunction with the ammonia still, which was required to be maintained on the unit by NYSDEC and USEPA even though TCC had made multiple requests to remove it. The response also noted that TCC had engaged a consultant to undertake an engineering evaluation, and to recommend a long-term engineering and operational solution to the cyanide exceedance issue. The results of the evaluation determined that the likely cause of the exceedances was the use of the dephlegmator, and recommended that the ammonia still unit be replaced. This information was conveyed to the agencies, and acted as a basis for discussions that led to the replacement of the ammonia still unit at the facility.
TOWN OF TONAWANDA, NOV No. 331-6, Sewer Use Ordinance, Section 165-20 B, 165-20 F	December 14, 2010	COMPLETE	The basis of the NOV was in regards to a naphthalene exceedance. Response on December 20, 2010 included subsequent sampling and analysis verifying compliance with the applicable permit requirement.
TOWN OF TONAWANDA, NOV No. 331-7, Sewer Use Ordinance, Section 165-20 B, 165-20 F	August 17, 2011	COMPLETE	TCC's response noted that the exceedance was due to a plugged steam control box, which was taken off-line, dismantled, cleaned, and re-installed. Follow up sampling indicated that this action addressed the cause of the exceedance.
TOWN OF TONAWANDA, NOV No. 331-8, Sewer Use Ordinance, Section 165-20 B, 165-20 F	November 22, 2011	COMPLETE	TCC's response noted that the cause of the exceedance was the dephlegmator unit that was required to be installed on the ammonia still by NYSDEC and USEPA, and for which the agencies would not allow TCC to remove it.
TOWN OF TONAWANDA, NOV No. 331-9, Sewer Use Ordinance, Section 165-20 B, 165-20 F	December 20, 2011	COMPLETE	The basis of the NOV was in regards to a cyanide exceedance. The notice identified that ongoing USEPA enforcement regarding on-going cyanide exceedances, so no further action required by the Town of Tonawanda.  TCC continues to monitor its current operations in order to maintain compliance with its Town of Tonawanda discharge permit.
TOWN OF TONAWANDA, NOV No. 331-10, Sewer Use Ordinance, Section 165-20 B, 165-20 F	January 20, 2012	COMPLETE	The basis of the NOV was in regards to a cyanide exceedance. The notice identified that ongoing USEPA enforcement regarding on-going cyanide exceedances, so no further action required by the Town of Tonawanda.  TCC continues to monitor its current operations in order to maintain compliance with its Town of Tonawanda discharge permit.

TOWN OF TONAWANDA, NOV No. 331-17, Sewer Use Ordinance, Section 165-20 F	January 15, 2013	PENDING	Formal investigation into the root cause of a mercury exceedance above the Town of Tonawanda discharge permit required by the Town. TCC is currently conducting a review into this matter, with a formal report due by July 17, 2013.
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